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 CORPORATION dba UKIAH AUTO DISMANTLERS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PINOLEVILLE POMO NATION,
 PINOLEVILLE POMO
 ENVIRONMENTAL ASSOCIATION
 and LEONA WILLIAMS,

Plaintiffs,

v.

UKIAH AUTO DISMANTLERS;
 WAYNE HUNT; ISABEL LEWRIGHT;
 WARRIOR INDUSTRIES, INC.;
 RICHARD MAYFIELD; ROSS
 JUNION MAYFIELD; PAULA
 MAYFIELD; KENNETH HUNT; U.S.
 ALCHEMY CORPORATION and
 DOES 1-50, inclusive,

Defendants.

Case No. C 07 2648 EMC

[Proposed] ORDER DISMISSING
 THE FIRST, SECOND AND THIRD
 CAUSES OF ACTION

Hearing:

Date: September 19, 2007

Time: 10:30 a.m.

Dept: Courtroom C

Judge: The Hon. Edward M. Chen

The motion to dismiss all causes of action arising from Plaintiff's first through fourth claims for relief, inclusively, specifically, the first cause of action, the second cause of action, and the third cause of action came on regularly for hearing on September 19, 2007 before the Court. The Court having reviewed the papers submitted by the parties and having heard the arguments presented by counsel, and good cause appearing therefore,

1 The Court finds the first cause of action, the second cause of action and the third
 2 cause of action must be dismissed for lack of subject matter jurisdiction and failure to
 3 state a claim upon which relief can be granted under Federal Rule of Civil Procedure
 4 12(b)(1) and 12(b)(6), specifically, the Court finds:

5 1. The first, second and third causes of action premises upon violation of the
 6 Clean Water Act must be dismissed for lack of subject matter jurisdiction because
 7 Plaintiffs failed to identify the nature of the violation, the location of the point source,
 8 the discharge location, or dates of violation as required under the Federal Water
 9 Pollution Control Act ("Clean Water Act" or "CWA") 33 U.S.C. §§ 1251, *et seq.* and
 10 therefore lacks jurisdiction over the claims.

11 2. The first, second and third causes of action must be dismissed for lack of
 12 subject matter jurisdiction under the Resource Conservation and Recovery Act
 13 ("RCRA") 42 U.S.C. 9601, *et seq.* because the court lacks jurisdiction for failure to assert
 14 the identity of the pollutants, the place of discharge, and dates of discharge.

15 3. The first, second and third causes of action must be dismissed under the
 16 RCRA because the alleged discharges, substances and activities subject to the CWA as
 17 alleged by plaintiffs are excluded from RCRA coverage, *id.* at §§ 6903(27), 6905(a);

18 IT IS NOW THEREFORE HEREBY ORDERED that the motion to dismiss of
 19 Defendants WAYNE HUNT and U.S. ALCHEMY CORPORATION dba UKIAH AUTO
 20 DISMANTLERS is GRANTED as to the first, second and third causes of action which
 21 are hereby DISMISSED.

22 DATED: _____

23 THE HONORABLE EDWARD M. CHEN
 24 Judge of the U.S. District Court
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